IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WP(C).No. 25321 of 2005(M)

PETITIONER:

F.A.C.T. SERVICE CO-OPERATIVE
SOCIETY LTD., NO.2700, UDYOGAMANDAL,
ERNAKULAM DISTRICT, REPRESENTED BY ITS
PRESIDENT S.PADMANABHA PILLAI.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SMT.PRIYA MAHESH

RESPONDENTS:
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1. BALAKRISHNA MENON K.,
"SOUBHAGYA", PERIYAR NAGAR,
P.O.THAIKKATTUKARA, ALUVA, ERNAKULAM.

2. JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, ERNAKULAM.

3. ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES, NORTH PARAVUR, ERNAKULAM.

4. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THIRUVANANTHAPURAM.

5. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY TO GOVERNMENT, CO-OPERATION(C)
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.P.N.MOHANAN
BY SPL.GOVERNMENT PLEADER FOR CO-OP SOCIEITY
SMT. A.G.ANEETHA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/08/2007, ALONG WITH WPC NO. 20197 OF 2005 WA NO. 1904 OF 2003 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.P.(C) No.25321 of 2005

Dated, this the 13th day of August, 2007

JUDGMENT

K.T.Sankaran, J.

This writ petition is filed by the F.A.C.T. Service Co-operative Society Limited. The first respondent in the writ petition was an employee of the society who retired from service on 30.11.2000. The society was facing financial crisis. The retirement vacancies were not filled up due to such crisis. It is stated that during the period from 1.4.1999 to 1.11.2001 five employees including the first respondent retired from service.

(2) Before the date of retirement of the first respondent, as per Government Order dated 22.3.2000, pay revision was effected with effect from 1.4.1999. Complaining that the arrears of salary for the period from 1.4.1999 to 30.11.2000 were not paid to the first respondent, he approached the Assistant Registrar of Co-operative Societies who granted an order in his favour. Since that order was not implemented, the first respondent filed O.P.No.2596 of 2003 for the issue of a writ of mandamus commanding the respondents to pass an order under Section 32 of the Kerala Co-operative Societies Act ('the Act' for short) and for other reliefs.

(3) During the pendency of that writ petition the application filed by the society for exemption from payment of the pay revision benefits was pending before the Registrar of Co-operative Societies. After disposal of that writ petition (O.P.No.2596 of 2003) on 7th October, 2003, the Registrar of co-operative Societies disposed of the application filed by the society by Ext.P1

order dated 22.12.2003. The relief prayed for by the society for exemption was granted for the period from 1.4.1999 to 31.10.2001. Ext.P1 order dated 22.12.2003 was challenged by an employee before the Government. By that time W.A.No.1904 of 2003 filed by the society against the judgment in O.P.No.2596 of 2003 was admitted and stay of operation of the impugned judgment therein was granted on 18.11.2003. Without noticing the stay order granted in W.A.No.1904 of 2003, the Government allowed the appeal filed by the first respondent herein against Ext.P1 order, by order dated 18.12.2004, marked as Ext.P2 in the writ petition. In Ext.P2 it was held thus:

> "Though the order passed by the Registrar is in conformity with the provision in G.O.(P)47/2000 it is against the direction of the Hon. High Court in the above judgment. The respondent society is bound to implement the court direction since no appeal is seen filed against the said direction. The order passed by the Registrar subsequently is not a bar for implementing the Court's direction. The appellant is entitled to get all consequential benefits of the pay revision orders with effect from 1.4.99 till his retirement on 31.10.2000."

(4) The Government found in Ext.P2 order that the Registrar of Co-operative Societies was competent to grant exemption and that he was justified in granting exemption, but for the judgment in O.P.No.2596 of 2003. The Government did not take notice of the stay order granted in W.A.No.1904 of 2003 and passed Ext.P2 order under the impression that the judgment in O.P.No.2596 of 2003 was in force and in operation. It was only on that ground that Ext.P1 order passed by the Registrar exempting the society from implementing the pay revision order was set at naught by the Government.

(5) Since it is not disputed that the judgment in O.P.No.2596 of 2003 was stayed by a Division Bench of this Court at the time when Ext.P2 order was passed by the Government, the substratum of Ext.P2 order goes. On that

ground, Ext.P2 order is liable to be set aside. Therefore, Ext.P2 order is set aside and the Government is directed to consider the matter afresh in accordance with law after affording an opportunity of being heard to both parties.

The writ petition is disposed of as above.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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